

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMERICAN PHYSICIANS
ASSURANCE CORPORATION,

Plaintiff-Counter-Defendant,

v.

DONALD JAMES HAM, M.D.,
ALAMOGORDO EYE CLINIC, INC.,

Defendants-Counter-Plaintiffs,

and THE ESTATE OF MARTHA
VALENCIA CARDON, DECEASED, by
and through Personal Representative
ELIZABETH ALVAREZ,

Defendant.

No. 1:08-cv-638 PK/ACT

ORDER

THIS MATTER comes on for consideration of Dr. Ham and AEC's Objections to Depositions Designated as Exhibits on December 29, 2009, filed January 8, 2010 (Doc. 265). Upon consideration thereof,

Dr. Ham and AEC object to the designation of the deposition transcripts/videos of witnesses Lynn Sharp, Dr. Ham, Randy Burroughs, and the deposition transcripts of all other witnesses (Exs. 225, 226, 227 & 228 on the Consolidated Exhibit List (Doc. 249)). Dr. Ham and AEC object on the grounds that (1) APA has not complied with the pretrial

order which requires designation of deposition testimony (and exchange of those portions designated), see Doc. 236 at 34-35 (pretrial order), (2) Mr. Sharp and Mr. Burroughs are not parties to this suit and will testify in person, and (3) Fed. R. Civ. P. 32(c) requires that deposition testimony for a purpose other than impeachment must be submitted in non-transcript form.

The pretrial order only anticipates designation of deposition testimony of those witnesses who will appear by deposition in lieu of live testimony. Obviously, the court will not admit whole depositions as exhibits, but deposition testimony of live witnesses can be read to the jury as part of impeachment and opposing counsel may select other portions to be read for context.

IT IS SO ORDERED.

DATED this 8th day of March 2010, at Santa Fe, New Mexico.



United States Circuit Judge
Sitting by Designation